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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,810	08/14/2003	Len Ekkert	1620-82491	3127
24628	7590	02/28/2006	EXAMINER	
WELSH & KATZ, LTD 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606			ELOSHWAY, NIKI MARINA	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/642,810

Applicant(s)

EKKERT, LEN

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 12, 2005 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 6-9, 11-15, 18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Stanish (U.S. 4,216,875). Stanish teaches a cap-utensil combination 20 comprising a cap 24, a rib structure 42, and a utensil 52. The cap has a top 28 and a side wall 34. The utensil 52 has first and second points of contact at opposite ends 64 and 62 and a third point of contact with the top wall at 68.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanish (U.S. 4,216,875) in view of Murdick et al. (U.S. 5,706,974). Stanish discloses the claimed invention except for the material section of the utensil having a square cross-sectional configuration. Murdick et al. teaches that it is known to provide a cap/utensil combination with a utensil having a square material section (see figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cap/utensil combination with the material section having a square configuration, as taught by Murdick et al., since it has been held that a change of shape is a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)).

6. Claims 4, 5, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanish (U.S. 4,216,875) in view of Atkinson (U.S. 5,705,212). Stanish discloses the claimed invention except for the rib structure having a plurality of rib segments. Atkinson teaches that it is known to provide a cap/utensil combination with a plurality of rib segments (see elements 30 and 32). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cap/utensil combination of Stanish with the continuous rib being replaced by a plurality of rib segments, such as those of the Atkinson cap, in order to save on material costs and increase the flexibility of the cap.

Response to Arguments

7. Applicant's arguments filed December 12, 2005, regarding the Stanish reference have been fully considered but they are not persuasive. Applicant has amended the claims to recited that the points of contact consist essentially of first, second and third points. It is understood that the phrase "consisting essentially of" is a "closed" term which limits the scope of the claim to the specified ingredients and those that do not materially affect the basic and novel characteristics of a composition *Ex parte Davis et al.*, 80

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U.S.P.Q. 448 (PTO Bd. App. 1948); In re Janakirama-Rao, 317 F2D 951, 137 U.S.P.Q. 893 (C.C.P.A. 1963). However, the present Specification recites that “the term ‘point of contact’ may refer to a location, such as the portion of the first end 138 of the handle 130 that contacts the inner wall 112 of the side wall 110 or a portion or all of the first end 134 of the material section 132 of the utensil 100 that contacts the area 160 on the inner surface 106 of the cap top 104.” (lines 6-10 of paragraph 00033 on page 6 of the originally filed Specification). As seen in figures 2 and 3 of the present application, the third “point of contact” is actually a continuous line at the mouth of the material section 132.

8. The patent of Stanish meets the limitation that the points of contact consist essentially of first, second and third points, as “point of contact” is defined in the Specification. Stanish teaches a utensil 52, shown in figures 12-14, which has a scoop portion at 70. The handle portion is element 72 which has two ends, and the scoop portion 72 also has two ends, one end at 64 and the other end at 68. The first point of contact is at end 62 and the second point of contact is at end 64. The third point of contact is considered to be the upper rim at sides 60 and including element 68. For these reasons, the rejections of the claims over the Stanish device are maintained.

Conclusion

9. **THIS ACTION IS MADE NON-FINAL.**

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is 571-272-4538. The examiner can normally be reached on Thursdays and Fridays 8 a.m. to 4 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained

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from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Niki M. Eloschway/nme
Patent Examiner
February 24, 2006